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Dissertation on review of "A monograph on mental unsoundness." by Francis Wharton."

Leonard Woolsey Bacon
Yale University.

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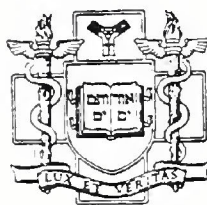
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1856

Review of
"A Monograph on Mental Unsoundness;
by Francis Wharton."

L W Bacon

This unpublished volume, bearing the name as author of a distinguished writer upon subjects of criminal law, forms the "First Book in a Treatise on Medical Jurisprudence" about to be published by Mr. Wharton in connection with Dr. Moreton Stillé, of Philadelphia. Having had the opportunity of examining one of the copies issued for private distribution, I have thought that it would be entirely consistent with the design of this exercise, and perhaps not altogether without interest to those who listen to it, if I should introduce, as the starting-point of the few remarks which I may make on the

subject of ~~Insanity~~ the Plea of Insanity, some notice of so important a work. Subjects, like this, in the department of Medical Jurisprudence, are certainly not the least important to be understood by the accomplished physician, since it is in relation to these that his duties, usually so unobtrusive, become ~~elevated into subjects of~~ the objects of public attention and notoriety; and concern, as truly as the treatment of wounds, or the prevention of pestilence, not only the life of the individual but the safety of the community.

The book before us is divided into two chapters. The first entitled "Mental Unsoundness in its legal Relations;" and the second, "Mental Unsoundness considered Psychologically." And the First Chapter is divided into four sections, I. What degree of unsoundness invalidates a Contract or Will. II. What is necessary to be proved in order to deprive a party of the management of his Estate. III. What degree of unsoundness avoids responsibility for crime, IV. How Far Intoxi-

ication affect ~~responsibility~~ Responsibility for Crime. Of these I propose to examine only the Third, viz: "What Degree of Unsoundness avoids Responsibility for Crime".

We might take exception at once to the statement of the question to be discussed. For the distinctions in Insanity ^{according to} by which some ^{insane men} are pronounced to be irresponsible, are plainly not distinctions of degree but of kind. If the question were, is the man more or less responsible? — we might ask questions about the degree of his insanity. But when the question is, Is he responsible or not? we must look for something specific by which to decide it. This will appear more evidently as we proceed.

The ~~common~~ ^{popular} answer to this question, "that the accused must be unable to distinguish ~~or~~ right from wrong," is discarded by this author in common with Dr. Ray and with modern authorities generally. And instead of it he classifies all cases of the avoidance of responsibility in three categories: — 1st, Cases in which the accused is incapable

of distinguishing right from wrong in reference to the particular act. 2^d Cases where the defendant is acting under an insane delusion as to circumstances which if true would relieve the act from responsibility, or where the reasoning powers are so depraved as to make the commission of the particular act the natural consequence of the delusion. 3rd Cases where the defendant is impelled by a morbid & uncontrollable impulse to commit the particular act."

Now not to raise ^{again} the question often mooted, but now, at last, generally conceded, touching the cases of "moral insanity" so called included in the last category, let us ask what sense it is in which the word irresponsibility is made to include such various acts? Obviously the most vague & uncertain possible. Notice the in the second specification above. "Cases where the defendant is acting under an insane delusion as to circumstances which, if true, would relieve the act from responsibility." We discover in the ^{author's} argument for this statement,

cases of self-defense, and certain cases of misadventure. But is a man who kills another in self-defense, ~~or by mistake~~ not responsible for the act? Or does our law recognize no distinction between irresponsible, and justifiable?

Looking at these three ^{sorts of} cases in view of the true meaning of the word, we shall see that the first is the only sort in which responsibility is avoided. An idiot, — a phrenetic, — a man without moral sense — is not responsible to a court of justice. The idea of justice does not apply to him, any more than to a wild beast or a locomotive engine. He is not susceptible of punishment but only of restraint, and at the last extremity, of death, for the safety of society. In the second sort of cases, that common sense of which the common law is the perfection decides, not that the agent is irresponsible, but ^{that} the act was either justifiable or accidental. For it is not necessary to constitute a justifiable homicide that the killer should ~~be~~ have been actually in danger of his life, but only that that should have been his strong belief. The case of Selridge ~~is~~ ^{it is} hardly an

necessary to be quoted in support of so obvious a principle. In the third-mentioned class of cases, in which "the defendant is impelled by a morbid & uncontrollable impulse to commit the particular act,"— in the sense in which the (to take the author's own interpretation of his words) the defendant ~~is~~ is neither irresponsible, nor justifiable. For by the phrase "uncontrollable impulse" the context shows that the author does not mean a spasmodic action of the muscles, to which the will does not become a party, but only a powerful influence upon the will. "Uncontrollable" signifies only ~~what~~ (to use a theologian's term) the moral inability of the agent to control the impulse. And here it is pertinent to remark that ~~the~~ if the physician & the juriconsult who associate in such a work as this would complete their resources, they would do well to borrow ^{somewhat} from a third profession which stands above them both, and touches the subject of human responsibility with a ~~bolder~~ firmer hand & a keener logic than either.

8

Concerning this ~~subject~~ of moral insanity, there can be no question, at the present day, that it does exist. There is a strong, and in a certain ~~and~~ sense of the word, an uncontrollable, impulse in some diseased minds after certain forms of crime, — an impulse which moves ~~the~~ ~~body~~ to the commission of these crimes in contravention of every apparent motive. And yet, if there is any point established with relation to such monomaniacs, it is that they are moral agents; — that they act in view of motives, and that in view of a sufficient penalty, they are deterred from the gratification of their morbid desires. Strange! that the more generally the moral treatment of lunatics is adopted & practised, the more loosely & recklessly their moral responsibility is denied.

But does not the morbid condition of the defendant's mind, in such a case, properly affect the degree of his punishment? Certainly it does! Just as among sane men the sudden & violent provocation is ~~not~~ ^{justly} allowed to reduce

the penalty of crimes of violence. This is not with the idea that the defendant is either irresponsible, or justifiable; but it is by way of reducing the degree of their guilt, or of recommending them to the mercy of the judge. It may well be doubted whether the existence of monomaniac desire should be suffered to go as far in palliating crime as the ~~tem~~ impulse of sudden anger. The very nature of the morbid impulse implies generally ^{too} much of conscience & of deliberation. The case is more nearly analogous to that of violent animal ~~pass~~ lusts, unbalanced either by mental culture, or by early habits of self-control. To relax the sanctions of the law to such as these, is perilous to society, and is a grievous wrong to the lunatic himself, & to all liable to his unspeakable calamity, inasmuch as takes away from him his greatest aid in resisting the struggles of his disease.

The argument brings ^{us} back not far from the principle which the instinctive good sense of early decisions established, that responsibility is limited by the capacity for distinguishing between right & wrong.

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